

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

MISC. PETITION NO.70 OF 1996

Industrial Reconstruction Bank

of India and Anr. Petitioners

versus

Paper and Pulp Conversions Ltd

and Ors. Respondents

S.N. Shah i/b. Purnanand and Co. for the plaintiffs.

CORAM : S.U. KAMDAR, J.

DATE : 21ST MARCH, 2005.

P.C. :

1. The petitioner is a financial instituton pursuant to the arrangement arriaved at between the petitioner and the respondnet no.1 being a loan

agreement dated 17.3.1987. The petitioner disbursed a sum of Rs.45,00,000/- . A deed of hypothecation dated 17.3.1987 was executed by the first respondent hypothecating all its moveable assts in favour of th petitioner herein. Thereafter on 3.7.1990 another loan agreement was executed and thereunder the petitioner further disbursed a sum of Rs.7,00,000/- . In respect of the said loan agreement also a hypothecation deed dated 3.7.1990 was executed. In veiw of the defaults made by the company to make the payments of the said amount the petitoner issued a notice by their advocates letter dated 10.6.1998 and calling upon the respondent company to make the paymtn of the amount outstanding under the said two facilities. The said right of recalling of defaults was exercised in a loan agreement dated 17.3.1987 and 3.7.1990. Inspite of the said notice no payment was forthcoming from the respodnent to the petitioner. Thus the petttioner filed the present petition alongwith claim of interest under the provisions of the IRBI Act which empowers the company to file the summary proceedings for recovery of the said amount by selling the said property

which are hypothecated and or mortgaged in favour of the petitionr herein. The petitioner has tendered a letter inter-alia pointing out the interest costs and charges as per the agreement dated 17.3.1987 and 3.7.19990 upto to date and it is claimed that there is no outstanding amount of Rs.1,1,93,617/- as due and payable by the respondet company to the petitioner herein. The petitioner is directed to file the affidavit placing the said letter on record within one week. The xerox copy of the said letter is taken on record.

2. An affidavit of service dated 28.7.1997 has been filed by the petitioner inter-alia indicating the service of the petition on the respondents. However inspite of the same the respondnet no.1 has remained absent. The other respondents are the claimants and are the pari passu charge holders. One of the respondnet being respondent no.8 is represented before me and has claimd that he is also entijtled to the sale proceeds as the pari passu charge holders in respect of the said aseets. The petitioner after disposing the assets as directed

under prayer clause (c) of the petition shall distribute the sale proceeds amongst all the pari passu charge holders in proportion of their charge and in accordance with the amount lent and advanced by them. In view thereof the petition is made absolute in terms of prayer clause (c), (d) and (e). The court receiver to conduct the sale of the said property and detain the sale proceedings and inform the claimants and other pari passu charge holders and thereafter shall distribute the sale proceeds accordingly. The petition is disposed off accordingly with no order as to costs.

sd/-
